

Filed: 8/8/2017 2:29:48 PM
Joshua B. Tackett
District Clerk
Navarro County, Texas
By Connie Schwarzlander Deputy

CAUSE NO. D17-26012-CV

TDJB LLC, d/b/a CORSICANA INN	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
vs.	§	13th JUDICIAL DISTRICT
	§	
SCOTTSDALE INSURANCE COMPANY,	§	
FOURSEVENTY CLAIMS, LLC AND	§	
GORDON LEE, INDIVIDUALLY	§	
Defendant.	§	NAVARRO COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW TDJB, LLC d/b/a CORSICANA INN (hereinafter "Corsicana Inn or Plaintiff"), Plaintiff herein, complaining of (1) Scottsdale Insurance Company ("Scottsdale"), (2) FourSeventy Claims, LLC, a Texas Limited Liability Company and (3) Gordon Lee, Individually, all Defendants herein, and for cause of action would show the Court the following:

I.

THE PARTIES AND THEIR RESIDENCES

1. Plaintiff TDJB, LLC, d/b/a Corsicana Inn is a Texas Limited Liability Company doing business in Corsicana, Navarro County, Texas.
2. Defendant Scottsdale Insurance Company is an Ohio company having its principal place of business at One Nationwide Plaza, Columbus Ohio 43215. Defendant Scottsdale may be served citation with Original Petition attached by the Navarro County District Clerk serving the Texas Commissioner of Insurance by Certified Mail Return Receipt Requested at his state address at P.O. Box 149104 Austin, Texas, 78714-9104.
3. Defendant Fourseventy Claims, LLC, is a Texas Limited Liability Company doing

business as an insurance adjuster in Waco, Texas, and may be served with process by delivering a copy of citation with Original Petition attached to its registered agent, Matt Fathersee at 302 Granite Drive, Waco, McLennan County, Texas 76712.

4. Defendant Gordon Lee, Individually, at all times material to this suit was an agent/adjuster of Defendant Fourseventy, LLC, and may be served citation with Original Petition attached at his place of business and employment located at 302 Granite Drive, Waco, McLennan, Texas 76712.

II.

DISCOVERY CONTROL PLAN

5. This case should be governed by *Tex. R. Civ. Proc.*, 190.3, a Level Two case.

III.

RULE 47 DAMAGE ALLEGATIONS

6. Pursuant to Rule 47, *Tex. R. Civ. Proc.*, Plaintiff Corsicana Inn alleges that damages sought by Plaintiff are over \$1,000,000.00.

IV.

VENUE AND JURISDICTION

7. Pursuant to §15.002(a)(2) *Tex. Civ. Prac. Code*, venue is proper in Navarro County because the events giving rise to Plaintiff's suit occurred in whole or in substantial part in Corsicana, Navarro County, Texas. Further, pursuant to §15.032, venue is proper in Navarro County because the premises and the real property the subject of the Scottsdale commercial insurance policy are located in Corsicana, Navarro County, Texas. Finally, venue is further proper in Navarro County, Texas, pursuant to §15.035, *Tex. Civ. Prac. Rem. Code*, because the subject contract of insurance was executed and consummated in Navarro County, Texas. This Court has jurisdiction because the

damages in this cause exceed the minimum jurisdictional limits of this Court.

IV.

BACKGROUND FACTS

8. This is a suit by Plaintiff on a commercial insurance policy and contract between Defendant Scottsdale and Plaintiff Corsicana Inn. Plaintiff Corsicana Inn owns a motel premises located in Corsicana, Texas. Corsicana Inn purchased a commercial insurance policy number CPS1406359 from Defendant Scottsdale to insure its motel premises effective from June 14, 2011 to June 14, 2012. The Plaintiff timely paid the requested premium and the policy became effective and in force.

9. On or about May 7, 2012, the Plaintiff's motel property sustained substantial damage caused by lightning. Among other things, there was substantial damage to the motel HVAC (PTAC) systems, its telephone system, its circuit breakers, its internet its computer systems, its electrical locks, its alarm and security system and other functional components. The damage to the motel adversely affected the Plaintiff's ability to conduct and operate its motel business. Ultimately, the Plaintiff had to shut down its motel operations and part of the motel has now been demolished.

10. Plaintiff Corsicana Inn timely reported the loss to Defendant Scottsdale and Defendant Scottsdale subsequently began a cursory investigation of the Plaintiff's loss. Even though Scottsdale acknowledged and paid a portion of the Plaintiff's loss and claim, Defendant Scottsdale failed to timely investigate and adjust the entire claim. Scottsdale engaged Defendants Fourseventy and Gordon Lee to investigate the claim or to pay Plaintiff what it was entitled to under the Scottsdale policy. Defendants Fourseventy and Gordon Lee failed to timely and properly inspect and investigate all of Plaintiff's damage to its property. Defendant Scottsdale's, and its agents' failure to act reasonably and in good faith in conducting the investigation and payment of Corsicana's

claim resulted in Plaintiff being unable to continue to operate its business and Plaintiff ultimately had to close its motel business. Plaintiff has contested the amount paid by Scottsdale and now seeks to recover the balance of its contractual claim plus damages for the loss of its motel business operations.

V.

BREACH OF THE CONTRACT (SCOTTSDALE)

11. Reurging the facts above as if expressly set forth herein, the refusal of Scottsdale to properly and reasonably investigate and timely pay the entirety of Plaintiff's claim constitutes a breach of the parties' insurance contract. At all times Defendant Scottsdale knew and was aware that Plaintiff was entitled to recover additional amounts under its policy but Scottsdale failed and refused to make payment as it is obligated to do. Defendant Scottsdale's breach of the insurance contract caused substantial harm and damage to the Plaintiff. Plaintiff seeks damages under the insurance contract and for its lost business operations. Plaintiff Corsicana Inn seeks damages well in excess of the minimum jurisdictional limits of the Court.

VI.

VIOLATIONS OF TEX. INS. CODE ANN. §542.051

(DEFENDANT SCOTTSDALE)

12. Reurging the facts above as if expressly set forth herein, the failure of Scottsdale to timely pay Corsicana Inn's claim constitutes violations of *TEX. INS. CODE ANN. §542.051*, et. seq., entitling Corsicana Inn to the full amount of its claim plus interest at the rate of 18% per annum and attorney's fees. At all times material to this claim, Scottsdale has received all necessary documentation and information from Plaintiff Corsicana Inn sufficient to make its decision to timely pay Corsicana Inn's entire claim. Scottsdale's failure to do so is a violation of §542.051.

VII.

VIOLATIONS OF TEXAS INSURANCE CODE (ALL DEFENDANTS)

13. Reurging the facts above as if expressly set forth herein, the conduct of the Defendants, jointly and severally, as described above, violates the *Tex. Ins. Code Ann.* §541.060 and 541.061 in one or more of the following particulars:

1. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of Plaintiff's claim when liability was reasonably clear;
2. Failing within a reasonable time to affirm coverage on Plaintiff's claim;
3. Refusing to pay a claim in full without conducting a reasonable investigation of Plaintiff's claim by creating delays, avoidance, refusals to communicate, and ignoring information furnished by Plaintiff;

Each of these acts was committed knowingly and/or intentionally by Scottsdale and entitles Plaintiff to recover additional penalties and damages, for which sums Plaintiff sues for herein.

VIII.

AGENCY AND NEGLIGENCE

(ALL DEFENDANTS)

14. Reurging the facts above as if expressly set forth herein, Plaintiff would further show that Defendants Fourseventy Claims and Gordon Lee were agents of Defendant Scottsdale engaged to investigate the Plaintiff's claim and were negligent in their inspection and investigation the Plaintiff's claim. Under Texas law their negligence is imputed to their principal Defendant Scottsdale. Because of the bad faith and negligence of Defendants Scottsdale, Fourseventy and Gordon Lee, Plaintiff seeks to recover its losses under the parties' insurance contract as well as for the wholesale loss of Plaintiff's motel business and operation.

IX.

BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

(ALL DEFENDANTS)

15. Reurging the facts above as if expressly set forth herein and through Defendants' acts failing and refusing to investigate Plaintiff's entire claim of loss. Defendants' breached their duties owed to Plaintiff to properly adjust and pay Plaintiff's claim.

16. The Defendants' breach of the duty of good faith and fair dealing was a proximate cause of Plaintiff's damages for which it sues for herein.

X.

CONSPIRACY AND FRAUD (ALL DEFENDANTS)

17. Reurging the facts above as if expressly set forth herein, Plaintiff seeks damages for common law fraud resulting from the Defendants' overt actions in failing to properly investigate Plaintiff's claim and denying Plaintiff's claim without having investigated and adjusting Plaintiff's entire claim. These Defendants have misrepresented the results of their investigation and have further concealed all or part of the material information gleaned from their investigation of the loss with the intention of inducing Plaintiff to accept an amount of benefits under the policy less than that which it is entitled. The conduct of these Defendants, jointly and severally, proximately caused the damages sought by Plaintiff for which Plaintiff sues for herein.

XI.

CONDITIONS PRECEDENT

18. All conditions precedent to Plaintiff's right to recover have been met or have occurred. Plaintiff has given Scottsdale timely notice of the loss. Plaintiff has given Scottsdale an accurate description of the loss. It has allowed Scottsdale an opportunity to inspect and examine the

property and cooperate fully with Scottsdale in it's investigation of the claim.

XII.

DAMAGES

19. Reurging the facts above as if expressly set forth herein, as a result of the foregoing conduct of the Defendants, Corsicana Inn has been damaged in a sum in excess of the minimum jurisdictional limits of the Court as described herein. Plaintiff Corsicana Inn seeks its actual damages in an amount in excess of the minimum jurisdictional limits of this Court. Plaintiff further seeks exemplary damages from Defendants, jointly and severally, for the tort liability claims described herein.

XIV.

ATTORNEY'S FEES

20. As a result of the foregoing allegations, Corsicana Inn was forced to employ the services Marty D. Price, a liccnsed Texas attorney, to protect and prosecute its interests and claims in this matter. Counsel has made written demand on Defendant Scottsdale to pay its claims unde the insurance contract. Accordingly, pursuant to Chapter 38, *Tex. Civ. Prac. Rem. Code*, Corsicana Inn is therefore entitled to recover its reasonable and necessary attorney's fees incurred at trial and in the event of an appeal.

PRAYER

WHEREFORE PREMISES CONSIDERED, Corsicana Inn prays that the Defendants be cited to appear and answer herein and that, upon final hearing, Plaintiff have:

1. Judgment against all Defendants, jointly and severally for Plaintiff's actual damages as described herein;
2. All double, treble, and additional or punitive damages against the Defendants for which

Corsicana Inn may show itself to be justly entitled.

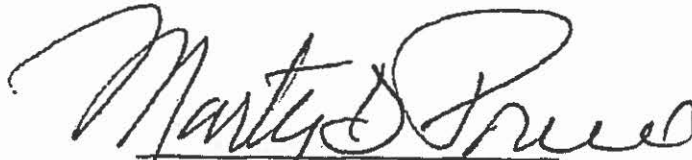
3. All prejudgment and post-judgment interest for which Plaintiff Corsicana Inn may show itself to be justly entitled at the maximum legal rate allowable by law (subject to number 1 above);

4. Reasonable and necessary attorney's fees at trial and on appeal.

5. Costs of Court; and

6. Such other and further relief, both at law and at equity, to which Plaintiff Corsicana Inn may show itself to be justly entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marty D. Price", is written over a horizontal line.

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